

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ARMANDO GARCIA DE LA CRUZ,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Case No. CIV-16-0181-F
	)	
JOHN DOE WARDEN, FTC, et al.,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Armando Garcia De La Cruz, a federal prisoner appearing pro se and in forma pauperis, filed this action pursuant to the Americans With Disabilities Act and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging violations of his constitutional rights. In Magistrate Judge Shon T. Erwin’s Report and Recommendation of July 26, 2017 (the Report, doc. no. 110), the magistrate judge recommends that defendant Dr. Kenneth Watson’s motion to dismiss or in the alternative for summary judgment (doc. no. 85) be granted, as follows. The Report recommends that plaintiff’s claims against Dr. Watson based on the Americans With Disabilities Act be dismissed for failure to state a claim upon which relief may be granted. The Report does not state whether this dismissal should be with or without prejudice, but the court finds that it should be without prejudice. In addition, the Report recommends that Dr. Watson be granted summary judgment on plaintiff’s claim alleged under the Eighth Amendment, given plaintiff’s failure to exhaust remedies. Summary judgment is appropriate on that claim because the record makes clear that the time for exhaustion has expired.


Plaintiff has not objected or otherwise responded to the Report. Nor has plaintiff requested additional time within which to do so.

Upon review, the court finds that it agrees with the recommendations in the Report and that no purpose would be served by additional discussion here.

Accordingly, with no objection having been filed to the Report, the Report and Recommendation of the magistrate judge is **ACCEPTED, ADOPTED** and **AFFIRMED**. Defendant Dr. Kenneth Watson's motion to dismiss or in the alternative for summary judgment (doc. no. 85) is **GRANTED** as follows. Plaintiff's claims against defendant Watson based on the Americans With Disabilities Act are **DISMISSED** without prejudice, for failure to state a claim upon which relief may be granted. Defendant Watson is **GRANTED** summary judgment on plaintiff's claim alleged under the Eighth Amendment, based on plaintiff's failure to exhaust administrative remedies within the required period.

This order does not dispose of all issues. Accordingly, this action remains referred to the magistrate judge.

IT IS SO ORDERED this 29<sup>th</sup> day of August, 2017.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE